

No. 122

AN AUTHENTIC

STATEMENT

OF THE

PROCEEDINGS OF THE MEMBERS

OF THE

ANCIENT CHURCH OF SCOTLAND,

RESPECTING THE MODE OF

ADMINISTERING OATHS.

LONDON:

PRINTED FOR T. BECKIT, IN PALL-MALL. M.DCC.LXXXIV.

LONDON: DERRY, REPRINTED BY JOHN BOYD.

1822.

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ADVERTISEMENT.

THE Pamphlet named in the titlepage, is now reprinted, that the public may be acquainted with the real objections of certain persons, who scruple to make oath in the *manner* in which it is usually administered in Ireland: and also, in the hope, that the information communicated by this publication may tend to the relief of many persons, who cannot conscientiously comply with the usual manner of swearing, practised in this country. The persons alluded to, consider an oath to be an act of religious worship, in which the God of heaven is adored; that when lawfully called to bear evidence to the truth, the command of God is their warrant for swearing, and that his Word prescribes the manner in which this act of worship is to be performed. They believe that the civil magistrate has a right to require their testimony in matters of importance; and that it is a duty which they owe to society, in such cases, to declare the truth. But they humbly conceive, that it is a duty which they owe to God, and to the religious feelings of their own minds, not to depart from that mode of swearing that has been sanctioned by the command and honoured by the example of the supreme Being, as it is recorded in scripture. If the mode of swearing, with which they can comply, be found to be agreeable to the laws of the land, as well as the word of God—they feel confident that in this enlightened age, their religious scruples shall meet with respect—their conduct shall be considered as flowing, not from disrespect to lawful authority, or indifference to the execution of justice; but from a regard to what they believe to be a divine command—and that the privations and losses to which they are subjected, instead of exposing them to banter or ridicule, shall procure the sympathy of the intelligent and humane part of society.

King James, the first, wishing to reclaim the lands and civilize the inhabitants of Ulster, encouraged his countrymen to settle there. Them, who did so, he protected in the observance of the forms of their religious worship. Their mode of swearing was the same as was practised in Scotland. In a subsequent reign the presbyterians were required by law to conform to the episcopal mode of worship. Those who submitted to this requisition, complied with the manner of swearing, at that time usual in England. At the memorable era of the Revolution, when toleration was granted to presbyterians, some of them, in their civil transactions, reverted to the manner of swearing used in Scotland, and some did not. But all denominations of presbyterians, in their church courts, adhere to the ancient mode of swearing, and never make a practice of presenting a book when administering an oath. Some have wondered why any would refuse to comply with the prevailing custom. The matter will not seem so wonderful to one who considers that in most of the countries of Europe, the custom is to lift up the right hand, having either all or three of the fingers extended—that in Scotland custom is against the use of a book—that in England a man will be allowed to swear, in whatever manner binds most strongly his conscience; and that in the British House of Lords, within these forty years, a person, then at the head of the law, proved to the conviction of the house, that the liberty of swearing, by lifting up the hand, was the law of the land, and the undoubted privilege of a British subject.

In this edition of the pamphlet, some parts of the original are omitted; because they respected the local situation and peculiar circumstances of the first publishers: and would not be interesting at present. Other parts are condensed into less bounds, and are contained within crotchets [thus]. The part of the narrative, now reprinted and not marked in the above manner, corresponds exactly with the original. If any wish to inform themselves on this point by personal inspection, they may obtain an opportunity by applying to the printer.

An appendix is subjoined to this edition, consisting of extracts from different authors, chiefly members of the church of England; and exhibiting a perfect coincidence of opinion between them and the members of the ancient church of Scotland, in respect to the manner in which oaths ought to be administered.

AN
AUTHENTIC STATEMENT,

&c. &c.

A **LAWFUL** oath is a part of religious worship, wherein, upon just occasion, the person swearing solemnly calleth God to witness what he asserteth or promiseth; and to judge him according to the truth or falsehood of what he sweareth. The name of God only, is that by which men ought to swear, and therein it is to be used with all holy fear and reverence. Therefore to swear vainly or rashly by that glorious and dreadful name, or to swear at all by any other thing, is sinful, and to be abhorred. Yet, as in matters of weight and moment, an oath is warranted by the word of God, under the New Testament, as well as under the Old; so a lawful oath, being imposed by lawful authority in such matters, ought to be taken.

Whosoever taketh an Oath, ought to duly consider the weightiness of so solemn an act, and therein to avouch nothing but what he is fully persuaded is the truth; neither may any man bind himself by oath to any thing, but what is just and good, and what he believeth so to be, and what he is able and resolved to perform. Yet it is a sin to refuse an oath touching any thing that is good and just, being imposed by lawful authority.

An oath is to be taken in the plain and common sense of the word, without equivocation or mental reservation. It cannot oblige to sin; but in any thing not sinful, being taken, it binds to performance, although to a man's own hurt. Nor is it to be violated, although made to heretics or infidels.—
See Westminster Confession, Chap. 22.

The mode of swearing an oath in the different nations, and ages of the world, hath been various. The lifting up of the hand unto the Lord the most HIGH God, is a *scriptural* way (Gen. xiv. 22. Dan. xii. 7. Rev. x. 5, 6.) and will have the preference in the esteem of all who are possessed with a becoming reverence for the statutes of JEHOVAH.

Moved by these considerations, and seriously aggrieved in their consciences, by the imposition of swearing by *laying the hand on, and kissing the Gospels*, several of his Majesty's most faithful subjects, Protestants of the ancient Kirk of Scotland, resident in London, met together in the month of October, 1780, and agreed to present, in the most respectful manner, the following Memorial:—

TO THE RIGHT HONOURABLE
WILLIAM EARL OF MANSFIELD,
Lord Chief Justice of the Court of King's Bench.

The Memorial of a considerable body of his Majesty's Protestant subjects, in London and Westminster, and the environs thereof; members of the ancient *Kirk of Scotland*, (as established in the year 1636,) assembled in the house of Mr. JAMES MILLAR, in St. Martin's-Court, St. Martin's-Lane, on the 4th day of October, 1780.

“It is humbly represented to your lordship, that the manner of taking an oath in Scotland, as by law established, is by holding up the right hand, when the oath is administered, and not by laying the hand on, and afterwards kissing the Gospels.

“That they cannot, in conscience, comply with the mode of swearing, usual in this part of the United Kingdom. It might be pleaded in their behalf, that many of them were bred and educated in Scotland, where they have been accustomed to a different manner of swearing.

“That there are numbers of people, in various parts of England, who have the same scruples, and labour under the same disadvantages with your memorialists.

“It is not from disaffection to his Majesty's person or government, that they do not comply with the common usage of this country in this matter, but because they conceive that

by so doing they would sin against God. They will yield to none of their fellow subjects, in affection to his Majesty's person, and attachment to the protestant succession in his illustrious family. They are not only sorry, that by non-compliance with the common form of swearing, they sometimes suffer considerable losses, but they are also heartily grieved, that on this account they cannot be of the same service which they might otherwise be of to their king and country. Men void of conscience and honesty, knowing their principles on this head, often take advantage to injure them in their property, and defraud them of that which they have a just title to; and in the late election at Westminster, it was with no small difficulty they were permitted to make oath in the manner which is agreeable to the dictates of their consciences, and it is now surmised that endeavours will be used for having their votes rejected as illegal, on account of the supposed informality in giving their oath.

"While *Quakers*, *Jews*, and *Mahometans*, are permitted to swear in the manner which is most agreeable to the dictates of their own consciences, they think it a great hardship that they should not be permitted to swear in a manner, which all protestants allow to be perfectly innocent, and which they humbly think is calculated to impress the conscience with an awe of the SUPREME JUDGE. They flatter themselves, that if the state of the case had been duly represented, protestant subjects would never have been denied a liberty, which they surely have a right to claim in this free country.

"The late *Lord Chancellor*, without the least hesitation, gave order to the commissioners of bankruptcy, in a special case, to administer the oath according to the Scotch form; yet the liberty to swear in that manner has been denied on different occasions since that time.

"They presume, however, that the Scotch mode is not contrary to the law of this land, and they conceive that there is no law or statute, but only use and custom, for the mode of swearing by kissing the book. In these circumstances they hope it will be reckoned just and equitable, that they should be admitted to swear in the manner authorised in the other part of the United Kingdom.

"May it therefore please your lordship to take this matter into your serious consideration, and we hope your lord-

ship will give your opinion, in such manner as your wisdom shall see proper, that the mode of swearing, *by lifting up the right hand*, is legal, and may be sustained as valid in any court of judicature, and before any magistrate in the kingdom.

By order of the memorialists,

(Signed)

JAMES MILLER, *Pres.*
JOHN KERR, *Sec.*

After presenting this memorial, the persons aggrieved finding, that their brethren in other parts of South Britain, still laboured, with themselves, under the same hardships as formerly, appointed a committee to take such steps as should appear to them necessary, for obtaining relief. This committee having consulted with several persons eminent for their knowledge in the law, at length agreed to petition parliament as the most constitutional way of procuring redress. Accordingly the following petition was, in the month of February, 1784, presented to the House of Commons.

TO THE
HONORABLE the COMMONS of GREAT BRITAIN,
In Parliament assembled,

The humble petition of a considerable body of his Majesty's Protestant subjects of the *ancient Kirk of Scotland*, resident in London and Westminster, and other parts of South Britain;

Sheweth,

“ That the manner of taking an oath in Scotland is, by *holding up their right hand*, when the oath is administered, and not by laying the hand on, and afterwards kissing the book.

“ That many of your petitioners being bred and educated in the principles of the church of Scotland, most strictly adhere thereto, and others of them, who entertain the like scruples, in regard to the mode of taking an oath, cannot in their consciences, and consistently with those principles, comply with the mode of taking an oath practised in this part of the United Kingdom.

“ That men void of conscience and honesty, knowing the principles of your petitioners on this head, often take the advantage of them, by refusing to pay to them their just demands, whereby your petitioners are frequently defrauded of their property, without having the means to come at justice.

“ That it is not from disaffection to, or any contempt of the rules established by *government*, that they do not comply with the common usage of this country in this particular, but because the solemn mode in which their form of oath is administered, is most agreeable to the dictates of their consciences. And your petitioners are heartily grieved, that on this account they cannot be of the same service, nor perform the same offices to the society, in which they live, as the rest of their fellow-citizens, very many of the magistrates in this country refusing to accept their oaths in the way they can only admit to be sworn.

“ That your petitioners conceive the mode of taking an oath by calling immediately on the SACRED NAME, as adopted by them; is perfectly solemn, and calculated to impress the conscience with an awe of the SUPREME BEING. And that as the mode of swearing by kissing the book, is founded alone in custom, your petitioners humbly hope that their application for this alteration in the mode of administering the oath to those of their persuasion, will be deemed but just and equitable, especially when it is considered, that they are entitled to take an oath in this manner in the other part of the United Kingdom.

“ That as this request has been heretofore complied with by the legislature in favour of certain dissenters called *Quakers*; and as by custom and usage, *Jews* and others are permitted to make oath in the manner most agreeable to the dictates of their conscience.

“ Your petitioners therefore humbly pray this honorable house, that leave may be given to bring in a bill, whereby the mode of taking an oath, *in the manner practised in North Britain*, may in all cases, where required by the party, be admitted, instead of an oath in the usual form.”

This petition being read, leave was given, and the bill brought in. Having passed unanimously through the House of Commons, it was carried up to the House of Lords. There, after the second reading, it went through a committee, and was

amended, when the dissolution of parliament prevented its further progress and passing into a law. The following is a copy of the bill, after it had undergone the above-mentioned amendments.

A BILL, intituled, An Act to ascertain the manner and form of taking an Oath by certain persons, Protestants of the ancient Church of Scotland.

“ Whereas certain persons, protestants of the ancient church of Scotland, resident in England, cannot, from scruples of conscience, comply with the mode of taking an oath according to the usage in England, but are desirous of being allowed to take an oath in all places within this realm, after the manner and form of taking the same in Scotland, as by law established.

“ And whereas such persons, as well as others, requiring their testimony, are thereby, in many cases, subject to great inconveniences; may it therefore please your most Excellent Majesty that it may be enacted, and be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, every such person (being a protestant professing the religious persuasion of the ancient church of Scotland as aforesaid) who may have an occasion, or who may be lawfully called upon to take an oath, in any case either criminal or civil, or in any other case whatsoever, within England, Wales, or the town of Berwick upon Tweed, shall, instead of being required to touch or kiss the book of the Holy Evangelists of God, and of having such oath administered to him, or her, in the usual form, ending with the words, *so help you God*, or *so help you God by the contents of this book*, be permitted to take such oath by holding up his or her right hand, and making use of the following words.

“ I, A. B., (being a protestant of the ancient church of Scotland) DO SWEAR BY GOD, AND AS I SHALL ANSWER TO GOD AT THE GREAT DAY OF JUDGMENT. That (after which shall be added the usual words of the oath to be taken, the same being adapted to the form hereby prescribed, as the occasion may require :).

And all judges, justices, magistrates, and other persons, authorised and required to administer any oath to such persons, so described as aforesaid, shall be, and they are hereby authorised and required to administer the same in the manner hereinbefore appointed, which oath so taken shall be of the same force and effect, to all intents and purposes whatsoever, as if such person had taken an oath in the usual form and manner: except for the purposes of qualifying such persons to serve upon juries, or to execute an office, in which case the oath must be taken in the form prescribed by law and usage.

“ And be it further enacted by the authority aforesaid, That if any such person, so described as aforesaid, or any other person whatsoever, taking such oath in the manner hereinbefore appointed, shall be lawfully convicted wilfully, falsely, and corruptly, to have sworn any matter or thing, which, if the same had been in the usual form and manner, would have amounted to wilful and corrupt perjury, every such person so offending shall incur the same penalties and forfeitures, as by the laws and statutes of this realm are to be inflicted on persons convicted of wilful and corrupt perjury.

“ And be it further enacted, That in case any person (not being a protestant professing the religious persuasion of the ancient church of Scotland) shall as such claim the privilege of this act, which is hereby meant and intended to be granted to persons of that persuasion and denomination only, and shall, under such pretence, take an oath in any case according to the direction of this act, every such person so offending shall be deemed guilty of a misdemeanor.

“ And whereas it is the practice of the Court of Exchequer in Scotland, to administer an oath after the manner and form used in England; be it enacted by the authority aforesaid, That all persons authorised and required to administer an oath in the said court of Exchequer in Scotland, shall be, and are hereby authorised and required to administer the same to any person or persons, being protestants, professing the religious persuasion of the ancient Church of Scotland, in the manner hereinbefore appointed; any law, usage, or custom to the contrary notwithstanding.

“ And be it further enacted, That this act shall be deemed and taken to be a public act; and all judges, justices, and others, are to take notice thereof accordingly.”

Upon the meeting of this present Parliament, the bill, as amended by the Lords in the former, was again brought into the House of Commons, and passed without opposition. It was carried up to the House of Peers, read a first time, and ordered to be read a second time on Wednesday the 14th of July, 1784, when the following debate took place, in which the rights of the persons praying relief are clearly affirmed, and the mode of swearing, by lifting up the hand, declared to be part of the law of the land.

HOUSE OF LORDS.—SCOTCH OATH BILL.

The order of the day having been read for the second reading of the bill to declare it lawful for certain persons, protestants of the ancient church of Scotland, resident in England, to take oaths *by holding up of their hands*, instead of laying their hands upon the Bible.

Lord Derby rose, and opened to the House the nature of the bill, and the circumstances that had attended it. He stated, that the bill had passed both Houses in the last parliament, and would now have been part of the law of the land, but for the dissolution of parliament that had taken place. He enlarged upon the necessity of allowing men, who entertained religious scruples against the form and manner of taking oaths, usually practised in this country, to make their appeal to the DEITY in the way most agreeable to their consciences. After fully urging such arguments as were applicable to the nature of the case, and were adduceable for its support, his Lordship moved, *that the bill be read a second time.*

The *Lord Chancellor* left the woolsack, and began a very able, learned, and convincing speech on the law, as it stood, and as it ought to stand, in respect to the particular subject of the bill. His lordship stated, that it was, and had been the practice of the courts of judicature, to admit persons of particular religions, and who entertained scruples of conscience with regard to the forms of taking oaths, to swear after the manner most consonant to their own religious opinions. Doubts, he said, had indeed been entertained, whether infidels, atheists, and those who denied or disbelieved the existence of God, ought to be permitted to take any oaths; but

those doubts had long since been substantially settled. Much argument had also obtained at different aras of christianity upon the nature of oaths, but nothing was more clear, more certain, or less disputable, than that the solemn appeal to God was the essence of the oath, and that the manner of making it was the form and circumstance only. That the form now claimed by those who call themselves members of the Cameronian church, and which meant members of the ancient church of Scotland, was a form that books bore testimony was of very ancient practice. In *Bracton*, a book which it was impossible to say precisely when it was written, he found this sentence—*singuli homines juraverunt erectis sursum manibus*. Other forms had also prevailed at other periods; thus from *Matthew Paris* we learn, that two sorts of oaths were wont to be taken in the reign of Henry the third, the *sacramentum more sacerdotis*, and the *sacramentum more laici*; the first, a solemn appeal to the DEITY, by laying the hand upon the breast, which was peculiar to ecclesiastics; the other, a solemn appeal to God, by imposition of the hand upon the book of the gospels, in use with the laity, *Matthew Paris* states, that Henry the third extorted money from the subject, under the pretence of his being about to institute a crusade for the service of the holy war. This call for money excited much jealousy at the time, and those who entertained doubts of the sincerity of the plea on which the King demanded money, so far prevailed, that they obliged him to take an oath by way of security, that he would institute such a crusade within a given time. This oath was two-fold, and consisted both of the *more sacerdotis*, and the *more laici*. Having stated this, his Lordship observed on the strange definition of what was commonly called a *corporal oath*, given in the work of a very learned writer, which work, however, he said, would have much greater authority, had it been published in the author's life time. In that work, a corporal oath was defined to mean an oath taken after the form and circumstances of the imposition of the hand upon the gospel. This definition, he said must necessarily startle every man of common sense, as often as it should present itself to his recollection, and it had so far startled him, that it had excited him to inquire on what foundations so improbable a definition rested. The result of his enquiry was a conviction, that nothing could be more false, or more wide from the fact, than the de-

finition in question. A corporal oath, he said, had its origin in the superstition of the Roman church, and came from the French words, *serment corporel*, or the Latin word *sacramentum corporale*, the cloth in which the body of our Saviour was wrapped; the touching of which with the hand was supposed to be the most solemn appeal to the Deity that could be made. After fully explaining the matter, his lordship recurred to the general reasoning upon the subject of swearing oaths, and declared that no judge, nor indeed any man at all acquainted with the courts in respect to oaths, or the usages and forms of legal proceedings in this country, would ever refuse to suffer any person, of any religion, to take an oath according to the form and circumstances most agreeable to his conscience. On this position, which he declared to be indisputable, he raised some arguments against the bill, contending, that to pass an Act of Parliament, to make that to be law, which was the law, and was universally held to be such, was frivolous in the first instance, and extremely absurd and pregnant with inconvenience; nay, he might add, with serious danger. He said, in former times, when parliaments were to the full as learned as they are at present, and infinitely more careful, they did not multiply the laws unnecessarily, and with a wantonness and a levity disgraceful to their own dignity. They took care so to frame their acts, that they should fully and intelligibly convey the meaning of the legislature when they passed the statute; and not leave a ground, much less an actual necessity for passing subsequent bills, to explain what was the meaning of laws previously passed. He observed, that it was stated in an author, who had treated upon the subject of oaths, that in 1745, various persons had desired to be sworn in the manner described by the bill, and that gentlemen of the grand juries had been permitted to swear in that manner; but that those upon the petty juries had been refused. This distinction appeared to him so extraordinary, that he could not credit it; and as it was upon the face of it scarcely reconcileable to reason and to common sense, that a grand jury, who were to find a bill of indictment, which identical bill of indictment was to be afterwards tried by a petty jury, should be sworn in one way, and the petty jury refused to be sworn in the same way, he had inquired into the fact, and found the book, which was an ordinary book, wrong, for that every person, who had at the time

desired to be sworn, had been indiscriminately permitted to take his oath in that manner. Upon the whole, there could not be a doubt how the law stood, and therefore to pass the bill, he repeated it, was not only frivolous, but big with inconvenience and danger; because, if the act was passed to establish the right of the members of the Cameronean church in this instance, it would operate to the increase and confirmation of the doubts that might be entertained by the ignorant as to the form and circumstances of taking an oath, in usage by other religions, who also differed no less essentially from the form and circumstances of taking an oath in usage in England, than those for whose benefit and relief the present bill had been prayed. For these reasons, and various others which his lordship stated, he declared he should advise the house to reject the bill, unless they meant to pass a number of such bills, applicable to all the various christian sectaries in the kingdom, for what was fit to be done for the relief of one, was equally due to others. He said farther, that he did not believe there existed the smallest difference of opinion upon this subject, among those either immediately presiding in the courts of justice, or acting under them. He could not take upon him to state what the opinion of a noble and learned Earl (Mansfield) was, who had presided in that house the greatest part of last session; but if he was at liberty to presume what his opinion was, he should suppose he concurred exactly in opinion with himself. He declared that the noble and learned earl in question had first excited his attention to the subject, and reduced him to consider it with the degree of investigation that it seemed to require; and that the result was, a thorough conviction that the law now stood as the bill declared it to stand, and that there needed not the aid of an act of parliament to make it more clear and intelligible than it was at present.

The *Earl of Derby* in reply observed, that a bill, similar to the present, had been introduced during the last session of the last parliament; it had passed both houses, but not as the noble lord had imagined, unnoticed by their lordships; on the contrary, it had undergone an ample discussion in a committee before their lordships, and alterations and amendments had been made in that committee, which were adopted in the present bill; but it had so happened, that after it had passed both houses, the parliament had been dissolved before

it received the royal assent. With regard to the other parts of the speech of the learned and noble lord, and general reasoning upon the subject, he begged leave for himself, and for those interested in the bill, to return his lordship his sincere thanks, for the very able, learned, and intelligent manner, in which the noble and learned lord had stood forth its advocate. He was persuaded arguments more forceable or more convincing could not be adduced in its favour, than the arguments of the noble and learned lord. He had not a doubt, in his own mind, of the propriety, and the truth of every syllable the noble and learned lord had advanced upon the subject; but without pretending to cope with the noble lord, without affecting to be, what he by no means pretended to be, the noble and learned lord's equal in ability, learning, or in the means of acquiring information upon that or any other subject, he could not but think all the noble and learned lord had said, went to shew the necessity of passing the bill; because, though it was admitted, as the noble and learned lord had stated, that the *more sacerdotis*, the *more laici*, and the *sacramentum corporale*, or the oath taken by laying the hand on the cloth that had wrapped up our Saviour's body, were essentially the same, and differed only in form and circumstance; and though it were admitted that the law stood, as the bill would declare it to stand, yet the fact being, that some persons, who entertain religious scruples about the form and circumstances of oaths, and whose scruples of conscience led them to be desirous of taking oaths, *by holding up of their right hand*, had been refused the privilege of being so sworn, and particularly in case of making affidavits of debts; it was necessary to declare, by an act of parliament, that they had a legal right so to be sworn. His lordship said he held in his hand, an instance of a case that had recently happened, in which two persons of the name of Cooper were refused the liberty of taking an oath, in the manner prescribed by the bill, touching a felony tried at the sessions house in the Old Bailey. (The Lord Chancellor asked from the woolsack, before what judge the cause had been tried? To which Lord Derby replied, that he really did not know.) If therefore the fact was, that persons were denied permission to be sworn in courts of justice in the metropolis, how much more likely was it that magistrates in the country, and others commissioned to admit persons to make their oaths, should

refuse in like manner? He hoped, therefore, their lordships would be of opinion that the bill ought to pass, and would suffer it to proceed.

The Lord Chancellor rose again, and informed the house, that the noble Earl had communicated to him, an instance of a person's desiring to be so sworn, and being refused; but that, upon enquiry, it had turned out, that the fact was directly the reverse of that communicated to him by the noble Earl. His lordship said further, that it was impossible for him to run after cases, stated to have been tried before no body knew what judges, but that it was to the last degree frivolous to be making acts of parliament to enforce what was already known to be law; and that if a justice of the peace refused to do his duty, it was not a declaratory act of parliament that would compel him to do it. He still therefore objected to reading the bill a second time.

The Earl of Derby replied, and said he could not agree with the noble and learned lord, in thinking that men's having it in their power to produce an express act of parliament, and shew it to any justice of the peace who refused to admit them to swear by holding up their hand, would not convince such justice what his duty was, and induce him to comply with the requisition.

Lord Loughborough rose to say a very few words, his lordship declared he concurred completely in every argument urged by the noble and learned lord on the woolsack, in regard to the existence of the law at present. Indisputably every man in this country had a right to be sworn after the form and circumstances most consonant to his religion. That the law stood so was a matter perfectly clear, and perfectly settled; but he nevertheless thought a purpose worth while might be answered by their lordships suffering the bill to proceed, and pass into a law, and that a simple, but a very useful purpose. If the parties, applying for the present bill, were anxious to have it expressly declared, that they might take an oath in the manner specified in the bill, what harm could there possibly be in gratifying their request? The doing so would not only confer a favour on those for whose relief the bill was intended, but it would remove much difficulty and inconvenience out of the way of those who might stand in need of the legal testimony of persons of that description; and it would also remove much difficulty and inconvenience out of

the way of those appointed to receive affidavits, and swear persons applying to them to be sworn, in different parts of the kingdom. There were, his lordship observed, in the courts of justice, and throughout the kingdom, a great variety of persons, whose office it was to swear such as had occasion to be sworn. Every body knew that no man could take out a writ and sue his debtor, without previously making an affidavit of his debt; and this affidavit must be sworn before a commissioner appointed, by some one or other of the courts, to take affidavits. These commissioners were not all of them men of sense, of candour, of clearness, and of liberality. There were also, among the magistrates in the commissions of the peace, many who were not a jot more sensible, more candid, more intelligent, or more liberal, than the commissioners just mentioned. If the bill passed, it would serve to convince such of these two descriptions what their duty was, and to prevent the inconvenience arising from their refusing, through ignorance of the law, to admit persons to swear, by the uplifting of the hand. Another useful consequence might arise from the bill, and that was, it defined, in express words, the form of the oath. His lordship declared, that had an application been made to him, while sitting as a judge, to admit a person to be sworn after the form and circumstances prescribed in the bill, though he should undoubtedly not have refused, he should have been at some little loss, as to the proper form of the oath. That doubt the bill went to remove, and for that, and the other reasons he had stated, he wished their lordships would suffer it to proceed.

The Lord Chancellor again left the woolsack, and said, the hearing a person of much less knowledge of the law and its practice than the noble and learned lord, declare that he should have any doubts, as to the form of the oath, would have excited in his mind, much alarm for the danger in which other religious persons would be put, if the present bill was to pass. He hoped, therefore, their lordships, if they consented to pass any bill like that under consideration, would make it a general bill, and extend it to all descriptions of christians. With regard to the commissioners appointed to take affidavits in the country, refusing to swear those who desired it, as the bill prescribed; if there were any of that description so dead and miserable a state of ignorance, they were unfit for their offices, and they ought to be deprived of them. If

any justice of the peace refused to do his duty, in this respect, let him be punished; file an information against him; a fact the newspapers would soon publish to the world, which would be a much better means of making it known what the law was in this respect, than the making a new act of parliament the medium of its publication.

On the question being put, the house divided,

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It was then moved to reject the bill, and which, upon the question put, was ordered accordingly.

We whose names are hereunto subscribed, were at the bar of the house of lords, when the Earl of Derby moved the second reading of our bill before cited, and in our recollection and judgment, believe the argument of the peers in parliament, as published in the Morning Chronicle, contains a true, faithful, and impartial statement of their speeches on that occasion, and the law as it stands in our favour.

Signed,

John Drummond,
William Clerkson,
James Millar,

William Walker,
George Gardner,
Benjamin Thomson.

July, 16, 1784.

At a select meeting of the united friends of the ancient church of Scotland, held at New Slaughter's Coffee House, on Monday, July 19, 1784, the following resolutions were unanimously agreed to, viz.

[RESOLVED—that the thanks of the meeting be given to George Dempster, Esq. and the Right Hon. Lord Viscount Maitland, by a deputation, for their friendly aid and support of our bill, in the house of commons. To the Right Hon. Charles James Fox, for his friendly and warm support of our bill. To the Right Hon. William Pitt, and the other members of the house of commons, friends to this bill. To the Right Hon. Earl of Mansfield, for his lordship's great atten-

tion and liberality to the numerous people praying relief by this bill. To the Right Hon. the Earl of Derby, by a deputation, for the warm and animated part he took in support of our bill, in the house of peers. To the Right Hon. Lord Loughborough, for his lordship's able defence of the undoubted *rights* and *claim* of the protestants of the ancient church of Scotland, to make oath as required by their bill. To the Right Hon. Lord High Chancellor, for the learned and able manner in which his lordship established the rights of the persons praying relief by this bill, by demonstrating and proving to the peers in parliament, that the law of the land was from time immemorial in their favour; and that all descriptions of magistrates and others who have power to administer an oath, are in all cases and matters whatsoever, where an oath is to be taken, bound by the law of the land to administer the same as required in the said bill; and that any magistrate refusing to administer the same, was, and is liable to an action at law, and severe penalties. To the Right Hon. Lord Viscount Stormont, and also, to the Right Hon. Earl of Galloway, for their attention and support of this bill. To the Right Hon. the Earl of Dartmouth and Radnor, and the peers in parliament, the friends of this bill, and of the rights of the people praying for this relief. To Gibbs Crawford, Esq. for his constant and persevering attention to our cause and interest, during the progress of our business, from the most early stage. To John Drummond, Esq. of Drummond and Middleton, for his early friendship, steady perseverance, and indefatigable attention to our cause.]

The debates in the house of lords on the subject of the bill, and their decision with respect to it, being read to the committee, the members expressed their warmest satisfaction. It gives them the greatest pleasure, that it will include many of his majesty's loyal subjects not in their communion; and they unanimously agree to publish this short account of the rise, progress, and issue of the bill, that the law on this point so ably stated by the Lord Chancellor, may be known to all concerned

Signed,

JOHN DRUMMOND, *Pres.*
JOHN KERR, *Secretary*

July 23, 1784.

APPENDIX.

The following extracts will shew that the mode of swearing with the right hand lifted up, is approved of by others, besides the members of the ancient church of Scotland.

The quotation that immediately follows, is taken from a letter, dated Smithfield, London, November 23, 1820, written by a gentleman, highly respectable in character, and eminent in office, but whose name cannot, with propriety, be introduced here; he not having been consulted in that respect.

*To the Pastor and Elders of the Cameronian Church,
at Londonderry.*

"You applied for assistance to obtain your undoubted right, that of making oath according to the form of your own church. I sent you, yesterday, a pamphlet, under cover of two franks, I would recommend you to republish the same, and disperse it among your society. I have besides mentioned it to two of the twelve judges of England, who say, there can be no doubt, that your mode is strictly legal; and indeed every form that binds the conscience of the party to whom the oath is administered. The Chinese, in *our courts*, throw up a cup or saucer, letting it break to pieces by the fall—and *hard, very hard* would it be, that protestants fearing God, should be debarred from their just rights, on account of whim, or want of information in the person who administers an oath."

The late Dr. Paley, a member of the church of England, and dean of Carlisle, one of the most esteemed writers of the present day, asserts, that an oath is a part of religious worship; that the scriptural mode, is with the right hand lifted up; that the form is not essential to an oath. He likewise insinuates, that the kissing of the book is no part of the oath. He says, "The forms of oaths, like other religious ceremonies, have in all ages, been various, consisting for the most part, of some bodily action, and of a prescribed form of words. Amongst the Jews, the juror held up his right hand towards heaven, which explains a passage in the one hundred and fortyfourth psalm, "whose mouth speaketh vanity, and their right hand, is a right hand of falsehood." The same form is retained in Scotland still.

"The forms of oaths in christian countries are also very different; but in no country in the world, I believe, worse.

contrived, either to convey the meaning, or impress the obligation of an oath, than in our own. The juror, with us, after repeating the promise, or affirmation which the oath is to confirm, adds, "So help me God;" or more frequently the oath is repeated to the juror by the officer or magistrate who administers it, adding in the conclusion, "So help you God." The juror whilst he hears, or repeats the words of the oath, holds his right hand upon a bible, or other book, containing the four gospels. The conclusion of the oath sometimes runs, "Ita me Deus adjuvet, et hæc sancta evangelia," or, "So help me God, and the contents of this book;" which last clause, forms a connexion between the words, and the action of the juror, which before was wanting. The juror then kisses the book; the kiss, however, seems rather an act of reverence to the book, (as in the popish ritual, the priest kisses the gospel, before he reads it,) than any part of the oath.

"This obscure and elliptical form, together with the levity and frequency with which it is administered, has brought about a general inadvertancy to the obligation of oaths, which both in a religious and political view, is much to be lamented; and it merits public consideration, whether the requiring of oaths, on so many frivolous occasions, has any other effect, than to make them cheap in the minds of the people.

"But whatever be the form of an oath, the *signification* is the same. It is the "calling upon God to witness, *i. e.* to take notice of, what we say," and it is "invoking his vengeance, or renouncing his favour, if what we say be false, or if what we promise be not performed."—*Moral and Political Philosophy*.—Chap. 16.

If, as Paley thinks, an oath is a part of religious worship, it is reasonable to expect, that the law would hold the shield of toleration over the person who offers to swear in a manner that is scriptural. If, as he insinuates, the kissing of the book is no part of the oath, but an act of religious reverence to the book itself; it is a serious matter, to compel a person to perform this act of religious worship to a piece of inanimate matter, while the person's conscience tells him, in the language of Jehovah, "thou shalt worship the Lord thy God, and him *only* shalt thou serve." If the custom was introduced by popery, it may be politic to observe the same, in administering oaths to the members of the church of Rome. To those who do not scruple to comply, it may be observed, without hurting their feelings, But how is it consistent with religion, poli-

ty, or humanity, to use compulsory measures towards those who cannot conscientiously comply with such a demand? It may be said, that it is customary; that it is an act easily performed; that it appears like obstinacy for a person to refuse. The same arguments were frequently used, to induce the primitive christians to worship the Roman emperor, by kissing his image, or bowing to it, or swearing by his genius; and what person of humanity does not feel shocked at the recital of the sufferings that many of them endured rather than comply!

Mr. Woodhouse, another archdeacon of the church of England, takes notice of the prevailing deviations from the scriptural manner of swearing, and remarks, with Mr. Paley, the continuance of the proper method still in Scotland. "The angel," says he, "takes a solemn oath in a form of scriptural antiquity. This mode of swearing has descended to our own times and nation, being still used in Scotland."—*Com. on Rev. x. 5, 6.*

Mr. Paley shews that our Saviour's prohibition, in the sermon on the mount, "swear not at all," does not forbid all kind of swearing, but prohibits swearing profanely, or by the creatures, and not by God himself. Mr. Woodhouse agrees with him, and for proof of the scriptural mode of swearing, produced by *Gen. xiv. 22.*—*Deut. xxxii. 40.*—*Ezek. xx. 5, 6.*—*Isa. xlviii. 8.*

The Rev. John Turner, a divine of the church of England, and formerly fellow of Christ's College, Cambridge, asserts that "Every oath is a part of divine worship, being an acknowledgement of the divine omniscience, and of his justice and power, it including an appeal to the former as a witness, and a prayer to the two latter, to dispose themselves either for our benefit or hurt, as we assert truly, or perform faithfully, what we affirm, deny, or promise." And again, "It is ridiculous to swear by any thing, whose omniscience cannot qualify it for a witness to the imprecation, and whose omnipotence cannot punish the falsehood of a deceitful oath, in the opinion of him who makes it."—*Exercit. London, 1684.*

An oath being an act of religious worship, in which the juror makes a solemn appeal to God, in case no other being but God, be made the object of that act of worship, it is not material, whether there be any bodily action accompanying the words of the oath or not.

When the hand is lifted up to heaven, it indicates our conviction, that the God of heaven is our witness. When we lay our hand upon our breast, we appeal to God, as the searcher of hearts. And the laying the hand under, or upon the thigh, was, in all probability, designed by the ancients, as an acknowledgment, that all creatures are the production of God, and that they depend upon him for prosperity. In eastern countries, the thigh was accounted an emblem of fruitfulness. The Hebrew word, *tachath*, is of more extensive signification, than in our translation, and may mean upon, or any part of the thigh convenient to its lower extremity. Such a meaning has the Latin word, *sub*, in the phrase, "*sub illis montibus*." Touching that part of the body, that was the emblem of fruitfulness, was, most probably, intended as a solemn acknowledgment of the productive energy of God, and of his being the source of happiness. This action, when required, on important occasions, was calculated to impress the mind with peculiar solemnity. But they never swore by the thigh. It was not the object of this oath, any more than the breast or the heavens. The thigh, never was like the contents of the book, expressed, or understood, to be joined with God, as the object of this religious act.

These observations reflect light upon many expressions and actions used by people of language, and derived from each other. Rachel says "she shall bear many more sons," and her children shall be reputed my offspring. Gen. xxx. 3. "A lawgiver from between his feet," Gen. xlix. 10., is rendered by the seventy (Greek translators) "from his thighs." *Genibus manus admove*, in the Latin tongue, signifies to request or imprecate with great solemnity. *Gonu*, in the Greek language, and *genu*, in the Latin, a knee, are derived from verbs which signify to beget. When Pythagoras would pass for a divine person, he represented his assumed divinity by the emblem of a golden thigh. When the Turks take leave of any person of superior rank, they lay their hands upon, and take hold of the part of their thigh that adjoins the knee. Paley having mentioned the conduct of Eliezar, in putting his hand under Abraham's thigh, says "From whence, with no great variation, is derived perhaps the form of doing homage at this day, by putting the hands between the knees, within the hands of the ledge."